

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RODGER D. MITCHELL,

Petitioner,

v. Civil Action No.: 2:14-12761

KAREN PSZCZOLKOWSKI, Warden,
Northern Correctional Facility,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed March 18, 2014.

This action was previously referred to Cheryl A. Eifert, United States Magistrate Judge, who, on October 27, 2014, submitted her Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommends that the petition be dismissed without prejudice inasmuch as petitioner has not exhausted his state remedies.

On November 5, 2014, the court received petitioner's objections, which came in two separate documents. The objections do not meet the magistrate judge's thorough analysis respecting why petitioner has failed to exhaust his state court

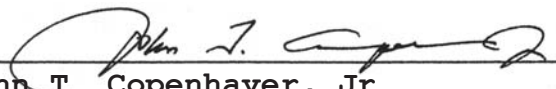
remedies. Petitioner is thus required to pursue the final adjudication of his state habeas claims prior to seeking relief in this court pursuant to section 2254. The objections are not meritorious.¹

Based upon the foregoing discussion, it is ORDERED that:

1. The findings made in the Proposed Findings and Recommendation of the magistrate judge be, and they hereby are, adopted by the court; and
2. The section 2254 petition, and this action, be, and they hereby are, dismissed without prejudice.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record, any unrepresented parties, and the magistrate judge.

DATED: December 29, 2014



John T. Copenhaver, Jr.
United States District Judge

¹ As noted by the magistrate judge, the petitioner currently has an appeal pending before the Supreme Court of Appeals of West Virginia. The court has learned from the clerk of the supreme court of appeals that the response to petitioner's brief is due on January 15, 2015, with any reply to be filed by February 5, 2015.